

(32)

*In the name of almighty Allah who has got unlimited jurisdiction over and beyond the universe.*

BEFORE THE COURT OF  
ADDITIONAL DISTRICT JUDGE, ORAKZAI AT BABER MELA

**Civil Appeal No. CA-02/13 of 2022**

**Date of institution: 09.01.2023**

**Date of decision: 04.04.2023**

Haji Salamat Shah son of Jan Muhammad and 03 others residents of Qaum Ali Khel, Tappa Mirwas Khel, village Sperkio Kalay, Tehsil Upper, District Orakzai.

..... **(Appellants/plaintiffs)**

...Versus...

1. DC Orakzai
2. Norzali son of Surat Shah
3. Kazim Shah son of Qalandar Shah resident of residents of Qaum Ali Khel, Tappa Mirwas Khel, village Sperkio Kalay, Tehsil Upper, District Orakzai.

..... **(Respondents/defendants)**

**Appeal against Judgement, Decree and Order dated 28.11.2022,  
passed in Civil Suit No. 22/1 of 2021.**

**JUDGMENT**

Instant Civil Appeal has been preferred by the appellants/plaintiffs against the Judgment, Decree & Order dated 28.11.2022, passed by learned Senior Civil Judge, Orakzai in Civil Suit bearing No.22/1 of 2021; whereby, suit of the appellants/plaintiffs with the title of "Haji Salamat Shah vs Noorzali Khan etc" was dismissed.

2. In suit for declaration and recovery of money, plaintiffs claimed due share in cash amount distributed under Citizen Losses Compensation Program (CLCP) by the Government of Pakistan. The dwelling houses damaged in militancy are part of joint property owned and possessed by the descendants of one and common predecessor in interest of the parties

  
**SAYED FAZAL WADOOD**  
District & Sessions Judge  
Orakzai at Baber MelA

at contest. Every consanguine has its due share in the amount that was illegally withdrawn by the defendants and necessitated presentation of suit. The Deputy Commissioner Orakzai was also arrayed as Defendant being the Authority responsible for assessment of loss and payment of compensation.

3. Deputy Commissioner Orakzai was placed and proceeded against ex-parte; whereas, other defendants appeared and objected the suit on various legal as well as factual grounds in their written statement. It was specifically pleaded by contesting defendants that the parties have partitioned joint holdings since long and everyone is residing in his own dwelling house. There is no joint dwelling houses of the plaintiffs and defendants. Presentation of suit was termed mala fide for harassing defendants.

4. Material propositions of facts and law asserted by one party and denied by other have separately been put into following issues by the learned Trial Judge.

- i. *Whether plaintiffs have got a cause of action?*
- ii. *Whether survey was conducted by the Government in respect of joint houses of parties situated at Spirkio Kalay, Chappar Upper Orakzai, hence, plaintiff are entitled to receive their respective share in the survey amount?*
- iii. *Whether parties are separately residing in their respective houses and the survey was conducted in respect of houses of defendant's No. 02 and 03, hence, plaintiffs have got no concern with the survey amount?*
- iv. *Whether the plaintiffs are entitled to the decree as prayed for?*

  
**SAYED FAZAL WADOOD**  
 District & Sessions Judge  
 Orakzai at Hangu

v. *Relief?*

5. Opportunity of leading evidence was accorded to both the parties.

Seizing the opportunity, plaintiff produced as much as three witnesses in evidence. Plaintiff No. 1 being attorney of other plaintiffs on the strength of power of attorney Ex.PW-1/1 was examined as PW-1 who confirmed the averments made in the plaint. Mr. Khayal Asghar Shah appeared as PW-02 and testified that he was part of the three member committee nominated by the locals for identification of houses damaged in the era.

Mr. Ali Anwar appeared as PW-03 who stated that being a member of local committee, the joint houses of the parties have identified and amount was released against such joint property. On turn, defendants had been able to examine three persons in support of their plea taken in defense.

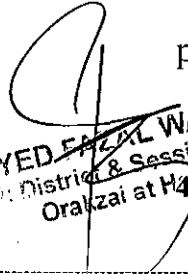
All the DWs fully denied the claim of plaintiffs by narrating the same story as in the written statement. They have asserted that private partition have already been carried out amongst the share holders and the survey of the houses made appple of discard is exclusive ownership in possession of defendants. Parties have been heard and suit was dismissed which is impugned by the plaintiffs in instant civil appeal.

6. Mr. Abid Ali Advocate for appellants argued that plaintiffs have proved their case on the strength of confidence inspiring evidence of the sufficient category of cogency. Besides, material facts have been admitted by the defendants and grant of decree was natural course of things. Dismissal of suit is based on non-reading of evidence that has not properly been appreciated. The refusal of the decree is the decision being contrary to law may be set aside and suit of the appellants may be decreed.

7. Mr. Insaf Ali Advocate representing respondents resisted the stance of opponent by stating that the parties being residing in separate houses is fact admitted which is sufficient for dismissal of suit. He added that there is material contradiction in the statements of the plaintiffs' witnesses and suit was rightly dismissed. The appellant has indulged the defendants in litigation and protracting it for no justifiable reason with mala fide. He added that the Deputy Commissioner Orakzai has also disbelieved the stance of the plaintiffs.

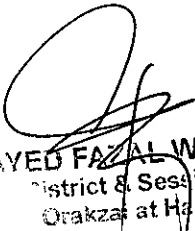
8. The parties have admitted some facts either in their pleadings or in evidence. Plaintiffs and contesting defendant are sharing a common predecessor in interest for being nephews and uncle interse. They have inherited property from a single source that is the grandfather of the plaintiffs and father of defendant. It is further being admitted that survey for assessment of collective damage caused in Military Operation to the disputed house has been conducted by Citizen Losses Compensation Program (CLCP) and cash amount has been paid to the defendants at contest.

9. The apple of discord between the parties that had given birth to instant litigation, is that defendant has refused to pay the alleged share of the plaintiffs in the total compensation amount. The ownership of appellant is being claimed on the basis of inheritance; whereas, ownership of the respondents/defendants has also been admitted to the extent of his share. Defendant/respondent termed it as sole ownership for being ancestral property partitioned since long; whereas, suit of the plaintiffs was named harassment with the object of grabbing amount. Whether plaintiffs are entitled for payment of compensation amount to the extent

  
**SAYED FAZAL WADOOD**  
 District & Sessions Judge  
 Orakzai at Hangu Page

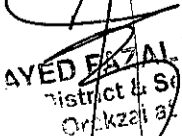
of their shares on the score of inheritance and defendant has wrongly taken hold of the whole amount and that plaintiff has wrongly been refused grant of decree, are the prime points of determination in pending appeal.

10. Keeping in view the admitted facts discussed in paragraph No.8 followed by point for determination mentioned in paragraph No.9 of this Judgement, the pleadings and evidence of the parties, when assessed, is reflecting that the plaintiffs and contesting defendant are consanguine being genetically related to each other. The property is inherited and parties being nephews and uncle are enjoying such inherited property from single source of inheritance. This alone is sufficient to establish probability in favor of plaintiffs and would require to be shattered by the defendants but let the evidence of the plaintiffs may be considered for strengthening such probability. The parties are genetically related to each other and all of the properties possessed by every descendant is inherited are facts admitted in pleadings as well as in evidence which is clear, unambiguous and unqualified. The admitted facts are only relevant and not conclusive; therefore, the evidence produced has to be examined in such context. PW-2 and PW-3 are members of the three member committee constituted by the majority of the village residents to identify the damaged houses to the team of Citizen Losses Compensation Program (CLCP). They are independent witnesses and being members of the local committee for such purpose are worth credible at least in the matters pertaining to CLCP. They have testified that the disputed dwelling houses have been identified by them during survey and being joint ownership, every one of the shareholders has got his due legal share. They further

  
SAYED FAZAL WADOOD  
District & Sessions Judge  
Orakzai at Hangu

clarified that local Jirga has been constituted which has finalized that the compensation of joint houses shall be distributed equally amongst all of them. In such manner, the plaintiffs have proved the case on the strength of confidence inspiring evidence supported by unqualified and clear admissions on part of defendants. To shatter such probability and to prove their plea of defense in line with Article 118 of the Qanoon-e-Shahadat, 1984, defendants recorded statements of DW-1 to 3. All of the DWs are silent over the manner and mode of partition, the quantum of property, the location and specification of the shares. All of them admitted the fact of relation of the parties and the status of landed property being inherited and had taken a specific plea of defence that everyone is residing in a separate house. First of all, this is unclear plea of defense for the reason that living in a separate house is by no stretch of imagination a negation of the joint ownership nor it is conclusive proof of private partition. If this defence plea, which is unclear and ambiguous, is being considered as plea of private partition taken place; even then, the specific plea taken in defence has to be proved by the defendant in line with Article 118 of the Qanun-e-Shahadat Order, 1984 and defendant badly failed to discharge such burden.

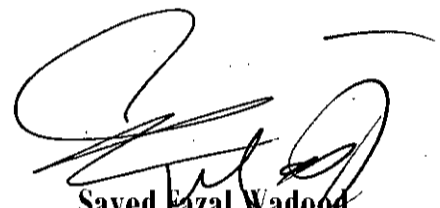
11. As far as legal question raised by learned counsel for defendants is concerned, the dismissal of earlier petition of the appellant by the Deputy Commissioner Orakzai is nowhere available on record of the file wherefrom someone can draw the wisdom and reason behind such dismissal; however, application being dismissed is fact admitted by both the parties but the same is no ground for dismissal of suit or appeal. The matter in issue between the parties is purely matter pertaining to civil right

  
SAYED FAZAL WADOOD  
District & Sessions Judge  
Orakzai, Balochistan

and the civil court is the single available forum for determination of question of titles.

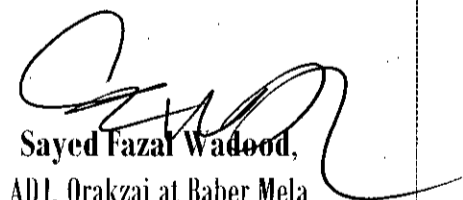
12. For what has been discussed above, it can safely be held that the learned Trial Court has erred in conclusion drawn; that too, for the reasoning not backed by proper application of law and thus not sustainable. Appeal in hand is allowed and consequently, the impugned Judgement and Decree dated 28-11-2022 is reversed. Suit of the plaintiff stands decreed as prayed for. Costs shall follow the events. Requisitioned record be returned back with copy of this Judgement; whereas, File of this Court be consigned to District Record Room, Orakzai as prescribed within span allowed for.

13. Announced in the open Court  
04.04.2023

  
Sayed Fazal Wadood,  
ADJ, Orakzai at Baber Mela

**CERTIFICATE.**

Certified that this Judgment is consisting upon seven (07) pages; each of which has been signed by the undersigned after making necessary corrections therein and red over to the parties.

  
Sayed Fazal Wadood,  
ADJ, Orakzai at Baber Mela